

EXHIBIT 1

In the Matter Of:

DARRYL HOWARD vs CITY OF DURHAM

1:17-cv-00477-TDS-JEP

MEGHAN E. CLEMENT

September 10, 2019



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1 that there was sperm in the anal cavity. So they
2 know there's some sort of sexual activity.

3 To say whether they should have or
4 shouldn't have, I mean that's their protocols.

5 Q. (Mr. Stevens) But it just wouldn't make
6 any sense for them not to stain would it?

7 A. It wouldn't make sense if they would stain
8 one and not another if they were doing them at the
9 same time.

10 Q. Let's refer back to Exhibit 61. And this
11 time we'll go through the information from the SBI's
12 microscopic exam of Doris Washington, if we can.

13 A. Okay.

14 Q. And if you look -- if you look at some of
15 the earlier pages, it appears that item number 3 --
16 or the first page, the item number 3 is the --
17 refers to items that came from Doris's sexual
18 assault evidence collection kit, correct?

19 A. Correct.

20 Q. And so if we turn to the page on the --
21 that has item number 3 near the top, ---

22 A. Yes.

23 Q. --- and then you look down and it says,
24 "Doris Washington," and it says, "Item 3(a)," and
25 you go from there.

1 A. Yes.

2 Q. It appears that there was a sealed Ziploc
3 bag that had both the red and purple tubes with
4 liquid blood that was part of that -- that was part
5 of what was gathered and looked at by the SBI. Is
6 that correct?

7 A. Yes.

8 Q. Okay. And it appears that they kept
9 stains from purple and a red-topped tube in a -- in
10 a freezer.

11 A. Yes. Stains were made, yes. And then the
12 stains, yes, were kept.

13 Q. And then it looks like they examined the
14 two vaginal smear slides.

15 A. Yes.

16 Q. And they found no sperm and moderate
17 epithelials?

18 A. Correct. That's a documentation.

19 Q. Okay. And then they determined that the
20 swabs were bloody and dry.

21 A. Correct.

22 Q. And I guess that's consistent with the
23 finding of the blood-tinged fluid from the autopsy.

24 A. Yes.

25 Q. And then I take it they did conduct the

1 acid phosphatase test because they didn't find
2 sperm.

3 A. Apparently, yes.

4 Q. Or the finding of sperm was what led them
5 not to bother with Nishonda, correct?

6 A. Correct.

7 Q. Okay. So they conducted the test for
8 Nishonda and it was negative, correct?

9 A. This is Doris.

10 MS. HOFFMAN: Object ---

11 Q. (Mr. Stevens) I'm sorry ---

12 MS. HOFFMAN: --- Objection.

13 Q. (Mr. Stevens) --- for Doris.

14 A. Yes. It does say, "Swab," and it looks
15 like it has a negative.

16 Q. Okay. What does that signify?

17 A. That the acid phosphatase presumptive test
18 was negative.

19 Q. And what does that mean?

20 A. It means that they did not observe acid
21 phosphatase.

22 Q. Okay. And what is the significance of
23 that?

24 A. That there was not -- that component of
25 semen wasn't identified, was not there.

1 Q. Is -- what is acid phosphatase again?

2 A. Acid phosphatase is an enzyme which is
3 found in various body fluids, but it's found in
4 higher concentrations in seminal fluid than other
5 body fluids.

6 Q. Is that an enzyme that breaks down over
7 time?

8 A. Sure. Yes.

9 Q. So are you less likely to find acid
10 phosphatase the -- the longer from the time -- the
11 period in which the sex occurred than more recently?

12 A. Certainly it will break down with time and
13 depending on the environment. So if it remains wet,
14 in a warm and wet environment, it will break down
15 more readily than if it's, say, deposited on an
16 article of clothing.

17 Q. And in this case, it's in a wet -- it was
18 in a wet environment because it came from a vaginal
19 swab, correct?

20 A. Correct.

21 Q. Which means it would break down more
22 slowly?

23 A. No. It would break down more readily.

24 Q. Quickly.

25 A. Yes.

1 Q. How long after sex occurs can one find --
2 can one have an acid phosphatase positive result
3 from a vaginal smear or swab?

4 MS. HOFFMAN: Objection.

5 A. It can be found hours. I mean, probably -
6 - it used to be that if somebody was reporting a
7 sexual assault that had occurred more than 24 hours
8 previous, they wouldn't even bother collecting it
9 because they wouldn't find evidence, typically, of
10 any sexual assault activity. So generally, that was
11 pretty much the outside, although often times the
12 acid phos could potentially even not be detected
13 again, prep -- maybe 20 -- 18 to 20 hour range, it's
14 possible.

15 Q. (Mr. Stevens) Okay.

16 A. It depends on activity. It depend -- I --
17 I mean there's so many variables. You know, if
18 somebody's on -- menstruating, you know, that blood
19 is going to be washing away the acid phosphatase, so
20 you'd be more likely to find it on clothing than you
21 would from a swab collected. So there's a lot of
22 variabilities. But yes, it will degrade over time
23 and if not collected within a fairly short period of
24 time, less than a day, there's a chance -- a good
25 chance you won't see it.

1 Q. Is it fair to say that sperm will last in
2 the vagina and can be able to be found longer than
3 acid phosphatase, as a general rule?

4 A. Yes. Generally you will have the ability
5 to detect sperm heads longer than you would acid
6 phosphatase.

7 Q. Okay. All right. We'll come back to
8 that. Going on to the next page -- sorry?

9 MS. HOFFMAN: I'm sorry. I couldn't
10 hear that for some reason.

11 Q. (Mr. Stevens) Okay. We're going on to
12 the next page. They -- there was a microscopic
13 review of the -- the rectal smear slabs for Doris
14 Washington and they did not find sperm and they
15 found -- what is it? It says, a ---

16 A. A few ---

17 Q. --- a few ---

18 A. --- to light.

19 Q. Few to light epithelials.

20 A. Epithelial cells and also no fecal debris
21 and there was -- basically it's a poor smear.

22 Q. Does that mean it was -- it was -- it
23 would be hard to find sperm even if it was there?

24 A. No. Generally with poor smear it means
25 it's -- there's very -- there's no much material on

1 it.

2 Q. Okay. And again, the -- the acid
3 phosphatase test was negative.

4 A. Correct.

5 Q. And then there were -- there was an
6 examination of the oral smear slides and the same
7 thing, no sperm found and light epithelials.

8 A. Correct. And light other cells.

9 Q. What would that -- what would the other
10 cells be?

11 A. Potential yeast, fecal cell -- oh, no.
12 Not fecal. This is just the oral. It could be
13 yeast. It could be just other cell debris.

14 Q. So the -- the ultimate determination of
15 the SBI was that there was no semen or sperm found
16 anywhere in Doris's rape kit, correct?

17 A. Correct. From the smears.

18 Q. Right. And from the swabs, they were
19 unable to find any -- the presence of any semen.

20 A. Correct. They tested it for acid
21 phosphatase and it was negative.

22 Q. Okay. So the autopsy and the lab were
23 consistent that, basically there was no male DNA
24 found on Doris, correct?

25 A. On the ---

1 MS. HOFFMAN: Objection.

2 A. On the smears, correct.

3 Q. (Mr. Stevens) And no semen found on the
4 swabs.

5 A. Correct. No acid phosphatase.

6 Q. Okay. Which was the test that they knew
7 how to do to -- for the -- to detect the presence of
8 semen.

9 A. The -- yeah, the presumptive test.

10 Q. Okay. But then when you conducted testing
11 many years later, you did find some DNA, correct?

12 A. Yes, that's correct. Only on the vaginal
13 swabs.

14 Q. Okay.

15 A. Well, we found DNA on the swabs, but we
16 found male DNA on the vaginal swabs.

17 Q. Okay. Did it surprise you to find that
18 when -- when nothing had been found earlier?

19 A. No.

20 Q. And why is that?

21 A. Because when you're looking at a smear,
22 it's such a small portion of the overall sample
23 versus when you're actually taking the swab material
24 itself and extracting from that particular sample.
25 So when you're using the swab to collect the sample

1 problem that we find with testing whole fingernails
2 is you generally tend to get the person who's
3 fingernail it is because all of their DNA is on
4 there. So then if it's -- there's minor amounts,
5 you tend to see just the victim overpowers anything.

6 Q. Is there a way to just soak the fingernail
7 in something to pull the DNA off?

8 A. It's possible. I mean, but as you're
9 soaking it, you're still going to get DNA from the
10 fingernail itself. But it is possible to soak it,
11 maybe create some sort of agitation to loosen up
12 something.

13 Q. Was there ever consideration of making
14 another effort to extract DNA from the fingernails?

15 A. No. We ran it and reported the results.
16 We were not requested to confirm additional testing.

17 Q. Okay. Now you -- I believe you testified
18 earlier when you were talking about Nishonda --
19 well, withdraw that.

20 When we were discussing how -- how long
21 prior to death the donor may have donated the sperm
22 for Nishonda, I believe you testified that an
23 important factor in your determination there of the
24 18 to 20 hours was the fact that there were intact
25 spermatozoa noted.

1 A. Yes.

2 MS. HOFFMAN: Objection.

3 Q. (Mr. Stevens) There were not intact
4 spermatozoa noted for the Doris samples or swabs or
5 smears, correct?

6 A. That's correct.

7 Q. Is it fair to say that the -- the DNA that
8 was found in Doris could have been contributed up to
9 three to four days earlier at least?

10 MS. HOFFMAN: I'm sorry. I couldn't
11 hear. Could you say that again?

12 Q. (Mr. Stevens) Is it fair to say that the
13 DNA found in the Doris sample could have been
14 contributed as much as three to four days earlier?

15 MS. HOFFMAN: Objection.

16 A. I wouldn't expect three to four days
17 earlier simply because we did obtain a full -- a
18 fairly full profile. I would -- in my experience,
19 it was rare. I don't know that I've ever seen a
20 profile like this in a sample that was collected
21 three days after a sexual assault. I can't recall
22 of a single instance where that's been the case.

23 My personal experience has been that I
24 don't know that I've ever found any profile in
25 somebody that had a sexual assault kit collected

1 three days after a sexual assault -- or profile --
2 obtained a profile like in anybody that had a sexual
3 assault kit collected three days after the
4 occurrence.

5 Can I say it's impossible? No. I can't
6 say anything is impossible. But I have not
7 experienced a profile like this in something three
8 to four days old.

9 Q. Have you experienced a profile like this
10 in something two days?

11 A. I would say maybe two days at the outside.

12 Q. Okay. And again, this is based on your
13 personal experience?

14 A. Yes.

15 Q. Okay. Is a ---

16 A. Oh, and -- and that -- that is from, you
17 know, a situation where it's a live victim who's
18 reporting this with -- you know, we had consensual
19 sex two days ago -- or we had, excuse me -- I was
20 raped two days ago and is going to have a kit
21 collected for the first time.

22 It -- it is not very common to see these
23 types. In -- in this, you have an injury in the
24 vaginal vault that is diluting the DNA. And so, in
25 somebody with -- with the blood that is being

1 deposited, it's going to be diluting anything that
2 is there even more. So in this, I would think it
3 would be more recent than two days.

4 Q. So on the one hand, let's -- let's assume
5 that whatever the injury in the vagina that caused
6 the blood to be there was something -- that would
7 have been something that happened contemporaneously
8 with the murder, most likely, correct?

9 A. Yes.

10 Q. Because of the blood-tinged fluid?

11 A. Well, nobody's going to allow a sharp
12 instrument to be ---

13 Q. Okay.

14 A. --- inserted. But there's definitely
15 blood in the vaginal vault area.

16 Q. Right. But about -- so somewhat
17 contemporaneously with there being blood in the
18 vaginal vault area ---

19 A. Yes.

20 Q. --- Doris Washington died, we assume,
21 correct?

22 MR. BANNON: I'm sorry. I didn't
23 hear that question. Would you mind saying that
24 again?

25 Q. (Mr. Stevens) We're assuming that

1 somewhat -- that she died somewhat contemporaneously
2 with this incision, correct?

3 A. The -- yes.

4 Q. Okay. And I think we discussed before
5 that some of the processes that break down DNA slow
6 down or cease with death, correct?

7 A. It continues to, but the activity that
8 would normally happen with a live person prevents
9 the loss because of the inactivity. But it doesn't
10 stop the degradation.

11 Q. But -- so what we have with Doris
12 Washington is a situation in which the medical
13 examiner viewed stained slides and did not find any
14 sperm on any of the samples, correct?

15 A. Correct.

16 Q. There was acid phosphalase -- phosphatase
17 present ---

18 A. AP.

19 Q. AP testing conducted that was negative ---

20 A. Correct.

21 Q. --- correct? And there was -- the
22 positive DNA result you got came from a vaginal
23 swab.

24 A. Correct.

25 Q. And typically DNA can -- I mean, that's a

1 more hospitable environment for DNA than -- than the
2 other, you know, either rectal or oral swabs,
3 correct?

4 A. More so than the rectal, absolutely.
5 Oral, you just have a constant flushing and so
6 usually you don't see it in the oral cavity as long
7 as you would a vaginal cavity.

8 Q. Okay. Are you familiar with any materials
9 regarding best practices for connect -- collecting
10 sexual assault case?

11 A. Am I fam -- I -- I'm sure there are some
12 other there. I don't collect kits, so I have not
13 reviewed any of them.

14 Q. Do you know or have any understanding of
15 how long after a rape or sexual assault -- sexual
16 assault nurses are instructed or told that they can
17 collect rape kits?

18 A. Today?

19 Q. Yes.

20 A. Today, I know that they're in transition.
21 Previously it had been 72 hours, but I believe
22 they're in the process of changing that for up to
23 five days.

24 Q. Okay. And are you familiar with any of
25 the studies that -- that provide, sort of, peer

1 review -- peer reviewed reporting regarding how long
2 sperm and/or DNA can remain and be found, you know,
3 after -- after an assault or rape?

4 A. I -- I've read some literature. I -- I'm
5 certainly not going to say I've read all of it, but
6 certainly I have read some literature and I know
7 that there has been literature, yes, that talks
8 about it being recovered three to five days and I
9 believe there's one that maybe had even gone up to
10 seven. But I don't know all of the circumstances
11 behind those.

12 Q. Okay.

13 A. And again, that's for today's technology.

14 Q. And you're saying today's technology is
15 more sensitive than that from when you conducted
16 your analysis in 2010?

17 A. Yes.

18 Q. Do you know what the standard would have
19 been in 2010?

20 A. In 2010, I believe -- I think it was three
21 days that they would have collected the sexual
22 assault kits up to three days afterwards.

23 Q. It's certainly possible that Jermeck Jones
24 had sex with Doris Washington three days before she
25 was murdered and you still found the results that

1 you did in your testing, isn't it?

2 A. Anything's possible, yes.

3 Q. But it's more than just a theoretical
4 possibility. I mean it -- that could have happened,
5 correct?

6 A. It's rare that this type of profile, using
7 this technology in 2010, would have resulted in a
8 profile for a sexual assault that occurred three
9 days prior.

10 Q. Okay.

11 A. Again, I can't say it's impossible, but
12 it...

13 Q. Okay. And what does it tell you about
14 when Jermeck Jones had sex with Doris Washington,
15 that the -- the AP testing came out negative?

16 A. Nothing. There are some people who are
17 very low -- males who have low concentrations of AP.
18 The fact that there was blood could have caused a
19 negative reaction with the AP. The fire and high
20 concentrations of heat could have caused the
21 breakdown of AP. So really the lack of AP doesn't
22 necessarily say anything about timing because of the
23 external factors.

24 Q. What percentage of rape kits or, you know,
25 materials that you have tested, in which there were

1 -- it was AP testing done, have -- have involved
2 negative tests when someone had sex with a victim or
3 assaulted the victim 12 hours or less before the
4 event?

5 A. I'm sorry. Can you ask that again?

6 MR. BRANNON: I'm the same. I was
7 hoping you'd say that.

8 Q. (Mr. Stevens) When you have reviewed
9 materials from sexual assault kits, when you were
10 aware that the sex had occurred at least 12 hours or
11 less before the event and there was AP testing done,
12 about what percentage of the time did that AP
13 testing come out negative?

14 A. Typically the only time we would see AP
15 tests come out negative is -- is if the woman was
16 menstruating.

17 Q. Okay.

18 A. But within 12 hours, generally we would
19 see a positive AP test.

20 Q. So normally you would see a positive AP
21 test unless the woman is menstruating. And then,
22 would you automatically -- if she was menstruating,
23 would you automatically not see it or would it just
24 be less likely?

25 A. Those were the situations where I would

1 not see it. It doesn't mean that it always wasn't
2 seen. Sometimes you would still see it.

3 Q. Okay.

4 A. It was just a case-by-case basis.

5 Q. But it's fair to say that the majority of
6 the time, when you are examining something,
7 materials that had been donated within the past 12
8 hours of the time that the, you know, the -- either
9 of death or the collection of the materials, you
10 would find the positive AP test.

11 A. Generally, yes, you would see the AP test.

12 Q. Okay. So if Doris Washington was not
13 menstruating at the time, the odds are that Jermeck
14 Jones had sex with her more than 12 hours before she
15 died?

16 A. I -- I can't ---

17 MS. HOFFMAN: Objection.

18 A. --- say that. I'm sorry. I -- I can't
19 say that.

20 Q. (Mr. Stevens) Okay. Why not?

21 A. Because there was -- even though she
22 wasn't menstruating, there was still blood in her
23 vaginal vault, so I don't know what effect that may
24 have had on the acid phosphatase, if any.

25 Q. Okay. Is it fair to say that the negative

1 AP test is suggestive of -- of a sexual activity
2 that occurred more than 12 hours before Doris
3 Washington died?

4 MS. HOFFMAN: Objection.

5 A. It -- it certainly could.

6 Q. (Mr. Stevens) Okay. Is it fair to say
7 that it's suggestive of sexual activity that
8 occurred more than 15 hours before she died?

9 MS. HOFFMAN: Objection.

10 A. I mean, any of these possibilities could
11 indicate. However, it's not -- I mean, I can't
12 clearly say it does or it doesn't.

13 Q. (Mr. Stevens) Why don't we take a break
14 for a couple minutes. I need to look at some notes
15 for a minute. I don't have that much more.

16 (Off record: 2:03 p.m. to 2:06 p.m.)

17 Q. (Mr. Stevens) Back on the record. Thank
18 you for your patience, Ms. Clement. The torture
19 will end shortly.

20 Is it fair to say that the scientific
21 opinions that you have to express were primarily set
22 forth in your certificate of analysis in Exhibit D?

23 A. That my sci -- I'm sorry. That my
24 scientific ---

25 Q. The ---

1 Darryl Howard did not have sex with Doris
2 Washington, correct?

3 A. There is no evidence of that, correct.

4 Q. In your opinion, at some point, Doris
5 Washington had sex with Jermeck Jones?

6 A. Correct.

7 Q. Okay. And we've established that this --
8 that could have been sex that occurred as -- as far
9 back as three days before she died?

10 MS. HOFFMAN: Objection.

11 A. I would say based on literature, it's
12 possible. Based on my personal experience, it would
13 be less than three days.

14 Q. (Mr. Stevens) And so the range of time,
15 based on your personal experience, would be more in
16 the neighborhood of one to two days?

17 MS. HOFFMAN: Objection.

18 A. It's hard to say because of all the other
19 external factors, including the injury, the fire, et
20 cetera.

21 MR. OSTRANDER: Can we go off the
22 record a second? Can we step out for a second?

23 MR. STEVENS: Sure.

24 (Off record: 2:09 p.m. to 2:12 p.m.)

25 Q. (Mr. Stevens) You testified that one --

1 one element that complicates the determination of
2 the timing of the Doris Washington, Jermeck Jones
3 sex is the fact that there was a fire.

4 A. Well, yes, as far as that's -- that's why
5 the -- my understanding there was a fire in the
6 apartment. Firemen were called. And so, yes.

7 Q. And how would a fire affect the materials
8 that were -- were collected in the rape kit?

9 A. Heat.

10 Q. Okay.

11 A. Heat tends to increase the rate of
12 degradation.

13 Q. So going back to the -- I mean what we can
14 say is that, you know, you can say that there was
15 sex between Jermeck Jones and Doris Washington at
16 some point before she died.

17 A. Yes.

18 Q. And it's difficult to tell exactly what
19 that point was.

20 A. Correct.

21 Q. Okay. But it could have been prior to the
22 time that she was murdered.

23 A. Yes.

24 Q. And the DNA evidence is consistent with
25 the possibility that Jermeck Jones had sex with her

1 and then at a later time, someone else murdered her.

2 A. That is possible, yes.

3 Q. Okay. The DNA evidence is also consistent
4 with the possibility that Jermeck Jones had sex with
5 her and then Darryl Howard murdered her, isn't it?

6 A. There is no DNA evidence that would
7 connect Darryl Howard to Doris Washington.

8 Q. There's no DNA evidence that would connect
9 -- we -- we had just referred earlier to Jermeck
10 Jones and then some unidentified third person that
11 murdered her. And that unidentified third person
12 could be Darryl Howard as much as anybody else,
13 correct?

14 A. That would be possible.

15 MS. HOFFMAN: Objection.

16 Q. (Mr. Stevens) There's no real evidence,
17 one way or another, that this -- that excludes
18 Darryl Howard as the person that committed the
19 murders, correct?

20 MS. HOFFMAN: Objection.

21 A. I'm sorry. Could you repeat that?

22 Q. (Mr. Stevens) The evidence that you
23 reviewed doesn't say, one way or another, whether
24 Darryl Howard committed the murders. It just says
25 that he didn't have sex with her, correct?

1 assault kits that you've reviewed, did you see
2 evidence of -- or a record about an injury to the
3 vagina like what was recorded in Doris's autopsy?

4 A. Less than a percentage of 1 percent
5 probably. I mean, I've seen a number of them, but I
6 couldn't give you an exact number. Maybe a couple
7 dozen.

8 Q. But it's safe to say that it's rare to see
9 a vaginal injury causing bleeding like there was --
10 to that extent like there was in Doris Washington's
11 case.

12 A. Yes.

13 Q. You were asked some questions about
14 whether anyone viewed intact spermatozoa in the
15 sexual assault kit taken from Doris Washington. Do
16 you remember that?

17 A. Yes.

18 Q. Okay. And it's your understanding that no
19 one viewed spermatozoa under the microscope on
20 anything taken from Doris Washington during the
21 sexual assault kit. Is that correct?

22 A. That is correct.

23 Q. So it's not that someone viewed
24 spermatozoa that were not intact, it's that they
25 weren't seen one way or the other?

1 A. That's ---

2 MR. OSTRANDER: Objection.

3 A. --- correct.

4 MR. OSTRANDER: Objection to form.

5 A. I'm sorry.

6 Q. (Ms. Hoffman: Okay. But this -- is there
7 any question that there was spermatozoa taken from
8 the smear collected from Doris Washington's vagina
9 at her autopsy.

10 MR. SAPPENFIELD: Objection.

11 A. The differential extraction that's used
12 uses a chemical differentiation. Non-sperm cells
13 will tend to break open and be part of the either
14 non-sperm or epithelial cell or female fraction,
15 whatever you want to call it. The fact that the
16 male profile was found in the sperm fraction is
17 consistent with that originating from spermatozoa,
18 but no one did microscopically identify them.

19 Q. (Ms. Hoffman) Okay. But the DNA testing
20 that you did on the vaginal swab from Doris's --
21 collected from Doris at autopsy, indicates that
22 there was spermatozoa present.

23 A. The fact that we found it in the sperm
24 fraction, yes, is consistent with spermatozoa being
25 present.



1 Q. And it wasn't a -- it -- it was not a
2 partial profile that you obtained, it was a full
3 profile from the spermatozoa -- from the sperm
4 fraction of the vaginal smear, correct?

5 A. It was mostly a -- it was partial only in
6 that we did not obtain results at one location. So
7 -- but it was a fairly full profile. I mean, it was
8 -- it was more full than partial. I mean, usually a
9 partial is if you get anything less than every
10 single location, it's considered a partial. So
11 there was just one -- one low side we did not get
12 results at.

13 Q. You were asked some questions about the
14 acid phosphatase testing that was done on -- in
15 Doris Washington's case.

16 A. Yes.

17 Q. First, as a -- and I understand that you
18 didn't do the acid phosphatase testing, but as a
19 general matter, is acid phosphatase testing done on
20 the entirety of the swab or is it done on a portion
21 of the swab?

22 A. Different labs do it different ways. Some
23 take just a small cutting of the tip of the swab.
24 Others will use a -- what they call a layover, where
25 they'll wet a piece of filter paper and dab it and

1 then test the filter paper. So I am not a hundred
2 percent sure which protocol the state lab used back
3 in 1991, I believe this was -- or maybe '92. Oh,
4 '93. Excuse me.

5 Q. And then when you -- when your lab did the
6 DNA testing on the swab -- that same swab, did you
7 -- you tested the entirety of the swab. Is that
8 correct?

9 MR. STEVENS: Object to form.

10 A. Let me double check on that. We consumed
11 50 percent of both swabs. So -- but we did take the
12 actual -- at least half of the entire swab.

13 Q. (Ms. Hoffman) Okay. Is there anything
14 inconsistent, in your mind, between the negative
15 acid phosphatase testing obtained at -- at the time
16 of autopsy and your DNA testing finding that there
17 was -- indicated that there was spermatozoa present?

18 A. No.

19 Q. And I think you mentioned before that
20 generally, in your experience, you would see a
21 positive acid phosphatase testing, although not --
22 not always but generally you'd see it unless the
23 woman was menstruating. Is that correct?

24 A. Yes. That is correct. I -- I seem to
25 remember one or two cases that were very unusual

1 where we may not have seen acid phosphatase, but
2 then we looked for sperm and we saw sperm and moved
3 forward with that. So, it was rare, generally, acid
4 phosphatase -- it's a presumptive test. You can get
5 false positives. You can get false negatives. But
6 generally, I mean it is a presumptive test that is
7 used to give an indication that sperm might be
8 present or semen might be present. But you --
9 generally the only time I didn't see it and
10 subsequently did see sperm and move forward, was
11 when a woman was menstruating.

12 Q. Okay. And again, there was indication
13 here, based on the injuries to the vagina, that was
14 caused at or around the time of the Doris
15 Washington's death, that she was bleeding, correct?

16 A. Well, that there was blood in the -- in
17 the vaginal vault.

18 Q. And so you testified, based on -- based
19 primarily on the results you were able to obtain
20 from the vaginal smear doing testing 20 years later,
21 about a -- a possible -- or what you could say about
22 the time when it was in which Jermeck Jones would
23 have had sexual contact with Doris Washington. Do
24 you remember that?

25 A. Well, I was asked a number of questions

1 about that.

2 Q. Right. And so what I just want to
3 clarify, when you talk about the -- a number in your
4 experience that would be based on those DNA results
5 you obtained, I -- I believe you said a couple of
6 days, one to two days. Is -- are you saying that
7 that's -- I just want to clarify. Are you saying
8 that it's your opinion that the sex was one to two
9 days before death or that that's the outer limit of
10 when the sex would have been based on ---

11 MR. STEVENS: Object to the form.

12 Q. (Ms. Hoffman) --- the time the evidence
13 you looked at?

14 MR. STEVENS: Object to the form.

15 MR. OSTRANDER: Join.

16 A. What I'm saying is that based on the
17 profile that was obtained, which was a fairly -- I
18 mean like I said, we only didn't get results at one
19 low side. The fact that this is a sample that was
20 20 years old, that -- I would put one to two days at
21 the outside limit, that the sex had to have occurred
22 some time and it -- at a very outside limit, one to
23 two days.

24 Q. (Ms. Hoffman) Okay. Mean -- meaning that
25 there's nothing in the results you got that is

1 inconsistent with the sex with Jermeck Jones
2 occurring shortly before the time of death?

3 MR. STEVENS: Object to the form.

4 MR. OSTRANDER: Objection.

5 A. That certain could -- could result in
6 this. In the result that we obtained.

7 MS. HOFFMAN: I don't have any
8 further questions.

9 MR. STEVENS: I have a couple more.

10 EXAMINATION

11 BY MR. STEVENS:

12 Q. Ms. Clement, how many -- how many sexual
13 assault kits have you collected in your career?

14 A. Collected?

15 Q. Yes.

16 A. None.

17 Q. How many examinations of sexual assault
18 victims have you conducted?

19 A. I have -- how many examinations of the
20 victims?

21 Q. Yes.

22 A. None.

23 Q. Okay. Let's refer back to Exhibit 65.
24 This is the autopsy report for Doris Washington.

25 A. Okay.

